

MEETING OF THE SCOTTISH SENTENCING COUNCIL
11 DECEMBER 2020
BY VIDEO CONFERENCE
MINUTES

Members present: Lady Dorrian, the Lord Justice Clerk (Chair)
Lord Matthews (judicial member)
Sheriff Principal Turnbull (judicial member)
Summary Sheriff Paul Brown (judicial member)
Susan Fallone JP (judicial member)
David Harvie, Crown Agent (prosecutor member)
Matt Jackson QC (advocate member)
Krista Johnston (solicitor member)
Deputy Chief Constable Will Kerr (lay member – constable)
Dr Hannah Graham (lay member)

Attendees: Alison Platts (for item 3.2 only)
Dawn Griesbach (for item 3.2 only)

Secretariat: Ondine Tennant (secretary)
David Dickson (principal legal officer)
Andrew Bell (principal research officer)
David Ross (senior policy officer)
Stuart Ritchie (communications officer)
Richard Smith (business manager)
Nicole Vidal (researcher)

1. PROCEEDINGS

Item 1.1: Introduction and welcome

1. The Chair opened the meeting and noted that no apologies had been received.
2. The Chair welcomed Lord Matthews and Summary Sheriff Paul Brown to the meeting and advised that their appointments as new judicial members of the Council had been confirmed by the Lord Justice General following consultation with the Scottish Ministers.

The Chair informed members that the recruitment processes for a new sheriff member and a victims expert were both ongoing and that updates on both were expected soon.

3. Richard Smith, who joined the secretariat in November as the Council's new business manager, was welcomed to the meeting.
4. It was noted that Alison Platts and Dawn Griesbach would be joining the meeting for item 3.2 to discuss their analysis of responses to the sentencing young people public consultation.

Item 1.2: Previous meeting minutes [Papers 1.2 and 1.2A]

5. The Council approved **papers 1.2 and 1.2A**, the minutes of the meeting of 09 October 2020 and a note of a confidential item discussed during the meeting.

Item 1.3: Progress of actions since last meeting [Paper 1.3]

6. The Council noted the progress of actions provided at **paper 1.3**.

Item 1.4: Private papers [Oral update]

7. The Council agreed not to publish the following papers: 1.2A, 1.3, 2.2, 2.2A, 3.3, 4.1, 4.2, 4.3, 4.3A, 5.1, 6.1, 6.2, 6.2B, 6.2C, 6.3B, 6.3C

Item 1.5: Council membership – update on recruitment [Oral update]

8. This was covered earlier in the meeting during the Chair's opening remarks.

Item 1.6: Membership of committees [Oral update]

9. The Chair noted that proposals for various committee appointments were put to Council for consideration in October, with the incoming members to be consulted on those proposals relevant to them.
10. It was noted that Lord Matthews was content to serve on the Death by Driving and Sexual Offences Committees but that further committee appointments would be taken forward once the new sheriff member had been appointed in order to ensure there is an appropriate shrieval perspective across the committee structure.

11. The Council also agreed that the secretariat should explore whether additional advisors should be appointed to committees where possible, particularly sentencers, in order to ensure a sufficient breadth of expertise when Council vacancies render committees few in members.

ACTION POINTS

AP1: *Secretariat to make arrangements for Lord Matthews to be formally appointed to the Death by Driving and Sexual Offences Committees.*

AP2: *Secretariat to take forward arrangements for appointing additional advisors, particularly sentencers, to committees.*

2. COMMUNICATIONS AND ENGAGEMENT

Item 2.1: Communications Committee update [Oral update]

14. Hannah Graham provided an update on the work of the Communications Committee. In particular, she noted that:

- The Committee has not met since the last Council meeting due to it having been inquorate. It will next meet in early 2021.
- Arrangements are being made for publication of eight research reports carried out on behalf of the Council. At the same time it is intended to update the research section on the Council's website to make published research more accessible.
- The secretariat gave a presentation to Scottish Criminal Law students at Dundee and Angus College on sentencing and the role of the Council.
- With two draft guidelines nearing completion and preparations for the 2021-24 business plan about to get underway, the secretariat intends to ask the Communications Committee to review the Council's communications strategy and in particular to consider opportunities to better promote the Council's work.
- Through 2020 the Council has been mentioned in 51 articles; had 61,000 website visits, 46,000 of which were the result of a "Google" search; and now has 340 new followers to its Twitter account.

ACTION POINTS

AP3: Secretariat to publish research reports and update the research section on the Council's website to make published reports more accessible.

AP4: Secretariat to liaise with the Communications Committee regarding a review of the Council's communications strategy.

Item 2.2: Updates from recent and upcoming engagement activity [Oral update, with reference to papers 2.2 and 2.2A]

15. The Council noted outputs of an Audit Scotland/ SPRE engagement event attended by Dr Hannah Graham (in her academic capacity) in January 2020. It was noted that the secretariat proposed to contact Audit Scotland to discuss areas of mutual interest.

16. Ondine Tennant gave an update about the secretariat's participation in the following events:

- A meeting with Scottish Women's Aid and ASSIST to discuss the evidence base for a domestic abuse guideline on 12 October.
- Meetings with Scottish Government officials to discuss the Council's work programme, funding model and other matters on 15 October and 02 December.
- A meeting with Sheriff Duff of the Judicial Institute on 09 December to discuss the upcoming work of the Council and the Sentencing Process guideline in particular.

17. Ondine also noted that:

- Transform Justice will be holding an online event entitled 'The Sentencing Council: leading role or bit part player?' on 15 December, looking at what role, if any, the Sentencing Council for England and Wales has in respect of the rising prison population in that jurisdiction. A member of the secretariat will be attending.
- The Scottish Criminal Bar Association had recently elected a new president and that this might present a timeous opportunity for engagement.

18. The Chair updated members about her attendance at the Scottish Parliament's Cross-Party Group on Adult Survivors of Childhood Sexual Abuse on 09 December 2020 to

discuss questions MSPs had around the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019.

19. In relation to upcoming engagement activity, the Chair informed members that she was expecting to meet the Cabinet Secretary for Justice in early 2021, to discuss the work of the Council.

ACTION POINT

AP5: *Secretariat to contact Audit Scotland to discuss areas of mutual interest between it and the Council.*

3. SENTENCING GUIDELINES

Item 3.1: Sentencing Process [Oral update]

20. Sheriff Principal Turnbull provided an update on the latest draft of the Sentencing Process guideline. In particular he noted that:

- Lord Turnbull and Sheriff McFadyen have been appointed as advisors to the Sentencing Process Committee.
- While it was not possible for the committee to meet prior to today's meeting, it had taken on board the points made about the guideline at the last Council meeting and these were considered via email.
- As a result a further draft of the guideline was circulated to members in advance of today's meeting for consideration via email.
- The committee hopes to engage in some judicial testing of the guideline in the new year.
- The committee will meet in the new year and also consider the further comments of Council members.

ACTION POINT

AP6: *Secretariat to arrange judicial testing of the Sentencing Process guideline alongside other guidelines in the new year.*

Item 3.2: Sentencing Young People – consultation analysis [Oral update]

21. Alison Platts and Dawn Griesbach delivered a presentation about their analysis of the responses to the public consultation on the sentencing young people draft guideline.
22. The Council provided some initial views on the findings of the analysis and it was noted that the draft report would be circulated to members shortly.

Item 3.3: Committees update [Paper 3.3]

23. The Council noted an update on the work carried out under the general auspices of its committees.
24. The Sentencing Young People Committee would meet next on 22 December to discuss consultation responses and consider revisions to the draft guideline. Research carried out by the University of the West of Scotland on the attitudes of young people to the draft guideline had been finalised and would be ready for publication in the new year. Various research reports, including a literature review, were now either finalised, or nearly so, and would be made available to the Committee for consideration in the new year.
25. Under the auspices of the Sexual Offences Committee, several externally commissioned research reports have been completed and are expected to be published in the new year. In-house research into sentencing practice, carried out in 2020, will be considered when the committee next meets.
26. While the Environment and Wildlife Committee remains suspended for the moment, a literature review exploring both these offences (commissioned prior to the decision to pause the project) was due to be published imminently.
27. The Research Committee is currently inquorate and does not have a chair. There are a number of research reports due to be published, including on sentence discounting (for which there is no subject committee) and the Committee is assisting subject specific committees in clearing these publications where appropriate.

4. RESEARCH

Item 4.1: 2021/22 Research priorities [Paper 4.1]

28. The Council noted **paper 4.1** and agreed the research priority areas for 2020-21, which are based on the Council's current work plan. These are:

- guideline testing (carried over from 2020/21);
- continued sexual offences work;
- continued sentence discounting work;
- continued domestic abuse work; and
- an additional project on public attitudes which would only be taken forward in the event that finances allow it.

29. It was noted that should there be any reduction in the Council's budget for 2021/22 the research budget, as the area with the most discretionary spend, would be the most affected and could result in some research work being delayed in the 2022/23 financial year.

Item 4.2: 2021/22 Research projects [Paper 4.2]

30. **Paper 4.2** provided details of proposed research projects for 2020-21. The Council discussed and agreed to the proposed research projects for 2020-21, including agreement in principle for a project in late 21/22 should finances allow.

Item 4.3: Judicial research: shrieval survey on community-based disposals [Papers 4.3 and 4.3A]

31. **Paper 4.3** sought the Council's agreement to conduct a survey on judicial attitudes to, and confidence in, community-based disposals.

32. The Council noted the terms of the draft survey at **paper 4.3A** and agreed it should be carried out in the first quarter of 2021.

ACTION POINT

AP7: ***Secretariat to take forward arrangements for a survey of judicial attitudes to community-based disposals in the first quarter of 2021, under the auspices of the Research Committee.***

5. POLICY DEVELOPMENT

Item 5.1: Policy update [Paper 5.1]

33. The Council noted **paper 5.1** which advised the Council of the following recent issues in respect of policy development:

- The publication of the Council's response to the call for views by the Equalities and Human Rights Committee of the Scottish Parliament on the UNCRC incorporation (Scotland) Bill.
- Structured deferred sentences.
- Community justice.
- The fact that the Sentencing Act 2020 has received Royal Assent. The Act consolidates sentencing legislation covering England and Wales into a Sentencing Code.
- The introduction of a Death by Dangerous Driving (Sentencing) Bill in the UK Parliament.
- The submission of the Council's response to the Scottish Government's consultation on raising the age of referral.
- The Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Bill.
- The coming into force of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.

34. There was some discussion of the Council's role in relation to assisting policy development, which is one of its statutory objectives. It was thought that the advent of a new administration in 2021 might offer opportunities to consider activity in pursuit of this aim.

6. GOVERNANCE AND REPORTS

Item 6.1: Review of standing orders [Paper 6.1]

35. **Paper 6.1** advised the Council in respect of the annual review of its standing orders and proposed some amendments. The Council approved the proposed amendments to the standing orders.

ACTION POINT

AP8: *Secretariat to publish the revised standing orders on the website as soon as possible.*

Item 6.2: Review of records management plan [Papers 6.2 and 6.2A-C]

36. **Paper 6.2** updated the Council in respect of the annual review of its records management plan and sought approval of amendments to the records management plan and information asset register. The Council noted the update and approved the proposed amendments.

ACTION POINT

AP9: *Secretariat to revise the records management plan and information asset register and arrange for the revised records management plan to be published as soon as possible.*

Item 6.3: Standing papers: correspondence, FOISA, and complaints; finance overview; guideline timetable [Papers 6.3A-C]

37. The Council noted the content of the standing papers.

Item 6.4: Decisions by correspondence [Oral update]

38. It was noted that no decisions by correspondence have been made since the last meeting.

7. AOB

Item 7.1: AOB

39. The Chair noted that the Annual Report for 2020/21 has been submitted to the Scottish Ministers, laid in Parliament and published early on the Council's website.

40. Note of thanks: on behalf of the Council, the Chair thanked current and former members for their valuable contribution to the work of the Council during 2020.

8. FUTURE MEETING DATES

41. The first Council event of 2021 is a workshop which will take place on Friday 19 February.

42. The first Council meeting of 2021 will take place on Friday 19 March.

Scottish Sentencing Council

December 2020